

*Ambach (Teresa & Michael) v. French, et al.*

No. 81107-5

CHAMBERS, J. (concurring) — I mostly concur with the majority. It has already been established that the Consumer Protection Act (CPA), chapter 19.86 RCW, does not provide a remedy for personal injury or medical negligence. *See Wash. State Physicians Ins. Exch. & Assn'n v. Fisons Corp*, 122 Wn.2d 299, 318, 858 P.2d 1054 (1993); *Quimby v. Fine*, 45 Wn. App. 175, 180, 724 P.2d 403 (1986) (citing *Short v. Demopolis*, 103 Wn.2d 52, 61, 691 P.2d 163 (1984)). But the CPA does reach “every person who conducts unfair or deceptive acts or practices in *any* trade or commerce,” including lawyers and doctors. *Short*, 103 Wn.2d at 61. Doctors are clearly answerable for false or deceptive acts in the entrepreneurial aspects of their practice. *Wright v. Jeckle*, 104 Wn. App. 478, 484-85, 16 P.3d 1268 (2001) (finding that the doctor was liable under the CPA for selling fen-phen) (citing *Eriks v. Denver*, 118 Wn.2d 451, 465, 824 P.2d 1207 (1992)).

Whether a particular act is entrepreneurial or not is a question of fact. *Eriks*, 118 Wn.2d at 465 (citing *Quimby*, 45 Wn. App. at 182). Perhaps because of this, Dr. French conceded for the purpose of summary judgment that prescribing the operation was entrepreneurial. Given that the

Washington State Department of Health found that Dr. French had improperly prescribed surgery 19 times, it might not have been a merely strategic concession. However, that is not properly before us.

I write separately to stress that there is nothing in our jurisprudence that should prevent a patient from bringing a CPA claim against a doctor who falsely and deceptively prescribed unnecessary or unnecessarily expensive surgeries as part of a business strategy. *Cf. Wright*, 104 Wn. App. at 479-80 (upholding CPA claim based on the “advertising, marketing, and sale of diet drugs”). *Wright* remains good law after today. Nor must a plaintiff necessarily allege that the doctor advertised a procedure or solicited patients. That issue is not presented, and it would be premature to reach it.

I respectfully concur.

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AUTHOR:

Justice Tom Chambers

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WE CONCUR:

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